

AMENDED IN SENATE JULY 1, 2003
AMENDED IN ASSEMBLY MAY 27, 2003
AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 691

**Introduced by Assembly Member Daucher
(Coauthors: Assembly Members Chu and Lieber)**

February 19, 2003

An act to add Chapter 1.6 (commencing with Section 120392) to Part 2 of Division 105 of the Health and Safety Code, relating to immunizations.

LEGISLATIVE COUNSEL'S DIGEST

AB 691, as amended, Daucher. Nursing facilities: vaccines.

Under existing law, the State Department of Health Services is responsible for the licensure and regulation of health facilities, including skilled nursing facilities and intermediate care facilities, as defined. ~~A violation of the law relating to these facilities is a misdemeanor.~~

Under existing law, the department also has specified responsibilities relating to the prevention and control of communicable diseases by various means, including requiring specified immunization by vaccine for various populations.

This bill would require a *long-term health care facility*, a skilled nursing facility, *an* intermediate care facility, or a nursing facility, as defined, to offer ~~immunization by vaccine~~ *immunizations* for influenza and pneumococcal disease to its residents, aged 65 years or older,

between October 1 and April 1 of each year, *and to offer pneumococcal vaccine to all new admittees*. The bill would require that the facility be reimbursed the standard Medi-Cal rate for vaccines provided to Medi-Cal recipients, except under specified circumstances. The bill would require the facility to obtain informed consent for the immunization services, from the resident or, *if the person lacks the capacity to make medical decisions, for the person legally authorized to make medical decisions on the resident's behalf*.

This bill would specify circumstances under which the immunizations may not be administered to a resident, and circumstances under which the facility shall not be required to provide the immunization services required by the bill. The bill would provide that ~~any good faith act or omission that results in the failure of a care facility~~ *if a health care facility fails to provide an immunization pursuant to the bill despite a good faith effort, the failure* shall not be the basis for issuing a deficiency or citation against the facility's license.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 1.6 (commencing with Section
2 120392) is added to Part 2 of Division 105 of the Health and Safety
3 Code, to read:

4
5 CHAPTER 1.6. INFLUENZA AND PNEUMOCOCCAL IMMUNIZATIONS
6

7 120392. For purposes of this chapter, the following
8 definitions apply:

9 (a) "Health care facility" means *a long-term health care*
10 *facility as defined in Section 1418*, a skilled nursing facility as
11 defined in subdivision (c) of Section 1250, an intermediate care
12 facility as defined in subdivision (d) of Section 1250, or a nursing
13 facility as defined in subdivision (k) of Section 1250. This chapter
14 shall not apply to hospital-based skilled nursing facilities.

15 (b) "Medically contraindicated" means that the administration
16 of the influenza or pneumococcal vaccines to a person, because of
17 a medical condition of that person, would be detrimental to the
18 person's health if the person receives either or both of the vaccines.

1 120392.2. (a) Each year, commencing October 1 to the
2 following April 1, inclusive, every health care facility, *as defined*
3 *in subdivision (a) of Section 120392*, shall offer immunizations for
4 influenza and pneumococcal disease to residents, aged 65 years or
5 older, receiving services at the facility, based upon the *latest*
6 recommendations of the Advisory Committee on Immunization
7 Practices (ACIP) of the Centers for Disease Control and
8 Prevention, *and the latest recommendations of appropriate*
9 *entities for the prevention, detection, and control of influenza*
10 *outbreaks in California long-term care facilities.*

11 (b) *Each health care facility, as defined in subdivision (a) of*
12 *Section 120392, shall offer pneumococcal vaccine to all new*
13 *admittees to the health care facility, based on the latest*
14 *recommendations of the ACIP.*

15 (c) The facility shall be reimbursed the standard Medi-Cal rate
16 for an immunization provided to a Medi-Cal recipient, unless he
17 or she is also a Medicare recipient whose coverage includes
18 reimbursement for the immunization.

19 120392.4. (a) A resident who receives services at a health
20 care facility during the period of October 1 to April 1 shall have
21 his or her status for influenza and pneumococcal immunization
22 determined by his or her physician, and, if appropriate, the facility
23 shall offer to make the immunizations available, *unless the facility,*
24 *through written policies and procedures and using standardized*
25 *nursing procedures, offers to make the immunizations available*
26 *without limitation as to the period when the residents receive*
27 *services at the facility.*

28 (b) A health care facility shall obtain from a resident who
29 requests immunization services, or, *if the person lacks the*
30 *capacity to make medical decisions*, from the person legally
31 authorized to make medical decisions on the resident's behalf,
32 informed consent for the resident to be immunized by vaccination
33 against influenza ~~and~~ *or* pneumococcal disease, *or both*, to be
34 conducted by the facility while the resident is receiving services
35 at the facility.

36 (c) A health care facility shall comply with Section 1418.8 with
37 respect to a resident who lacks the capacity to make health care
38 decisions, and there is no person with legal authority to make these
39 decisions on behalf of the resident.

(d) The health care facility shall document in a resident's medical record whether the resident has received the influenza vaccine or the pneumococcal vaccine.

120392.6. No person may receive either an influenza vaccine or pneumococcal vaccine pursuant to this chapter if any of the following conditions exists:

(a) The vaccine is medically contraindicated, as described in the product labeling approved by the federal Food and Drug Administration or by the recommendations established by the Advisory Committee on Immunization Practice (ACIP) of the Centers for Disease Control and Prevention that are in effect at the time of vaccination.

(b) Receipt of the vaccine is against the resident's ~~religious~~ *personal* beliefs.

(c) Receipt of the vaccine is against the resident's wishes, or, *if the person lacks the capacity to make medical decisions*, is against the wishes of the person legally authorized to make medical decisions on the resident's behalf.

120392.8. (a) Notwithstanding any other provision of this chapter, a health care facility shall not be required to provide immunizations for influenza and pneumococcal disease under either of the following circumstances:

(1) The facility is unable to obtain the vaccine due to a shortage of the supply of vaccine.

(2) The resident refuses to pay for the vaccine and there is no other funding source available to pay for the cost of the vaccine.

~~(b) Any good faith act or omission that results in the failure of a health care facility to provide an immunization pursuant to this chapter~~

(b) If a health care facility, as defined in subdivision (a) of Section 120392, fails to provide an immunization pursuant to this chapter despite a good faith effort, such as from clerical error, lack of availability of vaccine, or lack of patient cooperation, the failure shall not be the basis for issuing a deficiency or citation against the facility's license.